

STATE OF INDIANA



INDIANA UTILITY REGULATORY COMMISSION
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INDIANAPOLIS, INDIANA 46204-2764

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IN THE MATTER OF THE PETITION OF ONE)
CALL INTERNET, INC. FOR A CERTIFICATE)
OF TERRITORIAL AUTHORITY TO PROVIDE)
FACILITIES-BASED LOCAL EXCHANGE TELE-)
COMMUNICATIONS SERVICES; REQUEST)
FOR AN ORDER BY THE INDIANA UTILITY)
REGULATORY COMMISSION DECLINING TO)
EXERCISE ITS JURISDICTION, IN WHOLE OR)
IN PART, TO THE FULLEST EXTENT ALLOWED)
BY LAW, PURSUANT TO IND. CODE § 8-1-2.6;)
AND REQUEST FOR CONSENT FOR BOARDS)
OF COUNTY COMMISSIONERS TO GRANT)
RIGHTS-OF-WAY PERMITS, LICENSES OR)
FRANCHISES)

FILED

FEB 05 2003

INDIANA UTILITY
REGULATORY COMMISSION

CAUSE NO. 42281

You are hereby notified that the Indiana Utility Regulatory Commission ("Commission") has, on this date, caused the following entry to be made:

On August 19, 2002, On Call Internet, Inc. ("One Call Internet" or "Petitioner") filed its Petition with the Commission seeking authority to provide facilities-based local exchange telecommunications services and requesting an order by the Commission declining to exercise its jurisdiction pursuant to Ind. Code § 8-1-2.6. Pursuant to notice a Prehearing Conference in this Cause was held on September 26, 2002 and a procedural schedule was developed.

In accordance with the prehearing schedule, the Office of Utility Consumer Counselor ("OUCC" or "Public") filed its prefiled testimony of Angela Gilliland Kirkpatrick. In her testimony, Ms. Kirkpatrick directed the Commission's attention to a "Notice of Apparent Liability" ("NAL") issued by the Federal Communications Commission ("FCC") against One Call Communications, Inc., d/b/a Opticom ("One Call Communications") on the basis that its operator services engaged in "fat finger dialing" practices. Kirkpatrick Testimony at 6-12. The Public requested that the Commission investigate and consider the relationship between Petitioner and One Call Communications and/or stay this cause pending resolution of the FCC proceedings. *Id.* at 12.

On November 22, 2002, the Petitioner filed its rebuttal testimony of Robert J. Alcorn and its "Motion to Strike Portions of Public's Prefiled Testimony of Angela Gilliland-Kirkpatrick." Alcorn argued that One Call Internet was not an affiliate of One Call Communications and did not offer

operator services and, therefore, could not be responsible for any violations related to “fat finger dialing.” Alcorn Testimony at 2. Mr. Alcorn testified that although One Call Internet was named as a party in the NAL, the Petitioner has filed a Motion to Dismiss the NAL against it. He argued that staying these proceedings awaiting an FCC ruling on the Motion would damage the company due to the delay. *Id.* at 9-10. In its Motion to Strike, the Petitioner argued that the portions of Ms. Kirkpatrick’s testimony relating to the NAL were irrelevant to the showing necessary pursuant to Ind. Code § 8-1-2-88 for the Commission to issue a CTA to One Call Internet. Motion to Strike at 2-3.

In response, the OUCC argued that testimony related to the NAL and Petitioner’s relationship with One Call Communications was relevant to Petitioner’s request for a CTA. The Public stated that “the Commission must determine, among other things, whether a party requesting an intrastate telecommunications CTA has the managerial ability to provide such service to the public and must determine whether the granting of such authority would serve the public interest.” Response at 2.

In its reply, the Petitioner requested that the Commission defer ruling on the Motion to Strike until after hearing evidence at the evidentiary hearing.

On December 16, 2002, an evidentiary hearing was convened. The Petitioner was provided the opportunity to cross-examine the Public’s witness and respond to the Presiding Officers’ questions regarding the relationship between One Call Internet and One Call Communications and matters relating to the NAL. After Petitioner completed its cross-examination, Petitioner renewed its Motion to Strike. The Presiding Officers denied the Motion to Strike on the basis that the evidence was relevant to the financial and managerial abilities of the company and relevant as to whether it is in the public interest to grant the requested authority to One Call Internet.

The Petitioner then continued with the presentation of its case-in-chief regarding its Petition for territorial authority to provide facilities-based local exchange telecommunications services. After presentation of the evidence and witness testimony, the Presiding Officers requested a list of the operator service phone numbers served by One Call Internet and operator service phone numbers served by One Call Communications prior to January 31, 2001 together with an affidavit stating that One Call Internet has not served any phone numbers that are alleged by the FCC to have prompted fat fingered dialing violations and that One Call Communications did not serve such numbers prior to the separation of the companies.

The parties agreed to a post-hearing schedule with the Petitioner filing its Proposed Order and late filed exhibits responsive to the Presiding Officers’ requests on or before January 17, 2003; the Public filing its response and/or exceptions to the Proposed Order on or before February 4, 2003; and the Petitioner filing its reply on or before February 11, 2003.

On January 16, 2003, the Petitioner filed its “Motion for Stay of Proceedings” seeking to stay determination on its Petition pending a decision by the FCC in the NAL proceeding. The Petitioner stated that it had “re-evaluated its business plan and has determined that it does not wish to begin offering voice services as soon as originally planned...” Motion for Stay at 2.

The Presiding Officers, being sufficiently advised in the premises, now finds that One Call Internet's Motion to Stay should be DENIED. An evidentiary hearing has been held. But for the responses to the Presiding Officers' requests during the evidentiary hearing that were to be filed on or before January 16, 2003, all the evidence necessary for ruling on its Petition has been submitted by the parties. There is no efficiency to be gained by delaying these procedures at this time on the basis that the Petitioner has simply re-evaluated its business plan. Therefore, Petitioner is instructed to serve its late-filed exhibits and proposed order, if any, within 10 days of the date of this docket entry or move to withdraw its Petitioner without prejudice.

IT IS SO ORDERED.



David E. Ziegner, Commissioner



Carol S. Comer, Administrative Law Judge

2/5/03

Date



Nancy E. Manley, Executive Secretary